

Melbourne Henry

Deposition

April 28, 2006

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CHARLIE J. DAVIS, JR.,

Plaintiff,

vs.

ZELMER HYDEN, et al.,

Defendants.

\_\_\_\_\_)  
NO: A02-0214 CV (JKS)

DEPOSITION OF MELBOURNE HENRY

FRIDAY, APRIL 28, 2006, 10:27 a.m.

Anchorage, Alaska

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4 CHARLIE J. DAVIS, JR.,	4
5 Plaintiff,	5 EXHIBITS
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7 ZELMER HYDEN, et al.,	7 1 Memorandum and Prisoner Grievance - 20
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10 NO: A02-0214 CV (JKS)	9 3 Document entitled "Access to Health 53
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13 DEPOSITION OF MELBOURNE HENRY, taken on	12 5 pages
14 behalf of Plaintiff, Pursuant to Notice, at MATTHEWS &	13 5 Excerpt from DOC Policies and 55
15 ZAHARE, 431 West Seventh Avenue, Anchorage, Alaska,	Procedures - 32 pages
16 before Susan Campbell, Certified Shorthand Reporter	14
17 for Alaska Stenotype Reporters and Notary Public for	15
18 the State of Alaska.	16
19	17
20	18
21	19
22	20
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Page 3	Page 5
1 A-P-P-E-A-R-A-N-C-E-S	1 ANCHORAGE, AK, FRIDAY, APRIL 28, 2006, 10:27 a.m.
2	2 MELBOURNE HENRY,
3 For Plaintiff: MATTHEWS & ZAHARE	3 called as a witness on behalf of the
4 BY: THOMAS A. MATTHEWS	4 Plaintiff, having been duly sworn upon
5 431 West Seventh Avenue	5 oath by Susan Campbell, Notary Public,
6 Suite 207	6 was examined and testified as follows:
7 Anchorage, AK 99501	7 EXAMINATION
8 For Defendants: STATE OF ALASKA	8 BY MR. MATTHEWS:
9 ATTORNEY GENERAL'S OFFICE	9 Q. Would you state your name for the record,
10 Department of Law	10 sir?
11 Criminal Division	11 A. Melbourne Walder Henry.
12 BY: MARILYN J. KAMM	12 Q. If you'd spell all of them for me.
13 P.O. Box 110300	13 A. M-e-l-b-o-u-r-n-e, W-a-l-d-e-r, H-e-n-r-y.
14 Juneau, AK 99811	14 Q. Do you use the title of doctor?
15 Reported By: Susan Campbell	15 A. No.
16 Certified Shorthand Reporter	16 Q. Are you a doctor by training?
17	17 A. I am.
18	18 Q. A medical doctor?
19	19 A. No.
20	20 Q. Let me tell you right to begin with, I ask
21	21 questions sometimes simply because we need to get
22	22 answers in a written form that we can use later for
23	23 trial.
24	24 A. Yeah.
25	25 Q. Sometimes I ask questions because I simply

2 (Pages 2 to 5)

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<p>1 don't know the answer.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And I will ask you to help me through the</p> <p>4 process.</p> <p>5 <b>A. And I'll be happy to do that.</b></p> <p>6 Q. If I ask questions which you don't</p> <p>7 understand for any reason, please let me know and I'll</p> <p>8 be happy to rephrase them.</p> <p>9 <b>A. I will.</b></p> <p>10 Q. Okay. Have you ever had a deposition taken</p> <p>11 before?</p> <p>12 <b>A. Once before.</b></p> <p>13 Q. In what kind of a context?</p> <p>14 <b>A. Within the context of the Department of</b></p> <p>15 <b>Corrections.</b></p> <p>16 Q. Okay. Some years ago?</p> <p>17 <b>A. Yes, some years ago. We -- oh, we were</b></p> <p>18 <b>being sued by a physician who stated that we had</b></p> <p>19 <b>breached his contract.</b></p> <p>20 Q. A contracted physician with the</p> <p>21 Department --</p> <p>22 <b>A. With the Department --</b></p> <p>23 Q. -- of Corrections?</p> <p>24 <b>A. -- of Corrections, yes.</b></p> <p>25 Q. Let me ask you one favor, if I can, as we're</p>	<p>1 did you work?</p> <p>2 <b>A. For the Department of Corrections.</b></p> <p>3 Q. How long did you work for Department of</p> <p>4 Corrections?</p> <p>5 <b>A. From '98 to '03, about five years.</b></p> <p>6 Q. What was your position with Department of</p> <p>7 Corrections?</p> <p>8 <b>A. Health care administrator.</b></p> <p>9 Q. Maybe you could help me work our way back</p> <p>10 just through your basic educational training,</p> <p>11 background, that kind of thing, kind of a resume</p> <p>12 format. Employment history first.</p> <p>13 <b>A. I mentioned Department of Corrections.</b></p> <p>14 Q. Yes, sir.</p> <p>15 <b>A. Prior to that, I was a professor of social</b></p> <p>16 <b>work at Alabama Agricultural and Mechanical University</b></p> <p>17 <b>in Huntsville, Alabama. I was there for five years.</b></p> <p>18 <b>Before that, the University of Nevada at Reno for</b></p> <p>19 <b>three years. Prior to that, the Department of Health</b></p> <p>20 <b>and Social Services as director of mental health and</b></p> <p>21 <b>developmental disabilities.</b></p> <p>22 Q. Is that the Alaska Department of Health and</p> <p>23 Social Services?</p> <p>24 <b>A. Yes, the Alaska Department.</b></p> <p>25 Q. And before that?</p>
Page 7	Page 9
<p>1 going through. You're going to be very good, I can</p> <p>2 tell, at anticipating my question. But if you'd let</p> <p>3 me get it out, it will make it much easier on our</p> <p>4 court reporter, so we're not talking over the top of</p> <p>5 each other. Okay?</p> <p>6 <b>A. Excellent.</b></p> <p>7 Q. What is an address where we can reach you?</p> <p>8 <b>A. 8651 Kushtaka, K-u-s-h-t-a-k-a, Circle,</b></p> <p>9 <b>Anchorage, 99504.</b></p> <p>10 Q. And a good telephone number?</p> <p>11 <b>A. (907) 333-2835.</b></p> <p>12 Q. Are you currently employed?</p> <p>13 <b>A. I am.</b></p> <p>14 Q. By whom?</p> <p>15 <b>A. University of Alaska Anchorage.</b></p> <p>16 Q. What is your position there?</p> <p>17 <b>A. I'm a professor of social work.</b></p> <p>18 Q. How long have you held that position?</p> <p>19 <b>A. One year.</b></p> <p>20 Q. Is that a full-time position?</p> <p>21 <b>A. It is.</b></p> <p>22 Q. How long have you been with the university</p> <p>23 total?</p> <p>24 <b>A. One year.</b></p> <p>25 Q. Prior to your work at the university, where</p>	<p>1 <b>A. Before that, I was health care administrator</b></p> <p>2 <b>for the Hargraves Memorial Hospital,</b></p> <p>3 <b>H-a-r-g-r-a-v-e-s, in Mandeville, Jamaica. And before</b></p> <p>4 <b>that, I was medical social worker and an associate</b></p> <p>5 <b>hospital administrator for the Appalachian Regional</b></p> <p>6 <b>Hospital, A-p-p-a-l-a-c-h-i-a-n, in Beckley,</b></p> <p>7 <b>West Virginia.</b></p> <p>8 <b>And before that -- oh, I think I just got</b></p> <p>9 <b>one out of sequence. I was director of community</b></p> <p>10 <b>health services for the Department of Health in West</b></p> <p>11 <b>Virginia, and then the Appalachian Regional Hospital.</b></p> <p>12 <b>Yes. I'm sorry about that.</b></p> <p>13 Q. That's all right.</p> <p>14 <b>A. All right. And I was, I guess, a social</b></p> <p>15 <b>worker, child welfare worker for the Welfare</b></p> <p>16 <b>Commission for the State of Oregon. And I think</b></p> <p>17 <b>that's about it.</b></p> <p>18 Q. Where did you attend university?</p> <p>19 <b>A. I have a Bachelor's degree in Economics and</b></p> <p>20 <b>Sociology from Warner Pacific College in Portland,</b></p> <p>21 <b>Oregon. I have a Master's in Social Work, MSW, from</b></p> <p>22 <b>Portland State University, Portland, Oregon. I have a</b></p> <p>23 <b>Master's in Public Administration, MPA, from the</b></p> <p>24 <b>University of Southern California. And I have a</b></p> <p>25 <b>doctorate in the field of social work and social</b></p>

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3 (Pages 6 to 9)

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1 gerontology from the University of Southern  
2 California.  
3 Q. What year did you get your Ph.D.?  
4 A. In 1975.  
5 Q. Okay. Let me see if I can put a few years  
6 with some of the rest of this.  
7 A. Yes.  
8 Q. Your work at Alabama Agricultural  
9 University --  
10 A. Yes.  
11 Q. -- five years, that would have been  
12 approximately '93 to '97, '98?  
13 A. '98. I left there directly and came up here  
14 in '98.  
15 Q. Okay. And then the University of Nevada at  
16 Reno was the three years before that?  
17 A. Yes.  
18 Q. Which would have been '90 to '92?  
19 A. I started there in -- it's '89 to '92.  
20 Q. So your work for the Alaska Department of  
21 Health and Social Services would have been what years?  
22 A. From '84 to '88. And I was a consultant  
23 just on my own for -- until '89 for about a year.  
24 Then I left -- I left in '89 to go to Nevada.  
25 Q. Your work at Hargraves then would have been

Page 11

1 what years?  
2 A. Hargraves would be '80 -- let's see. '80 --  
3 well, let me --  
4 Q. Just approximately.  
5 A. Yeah. Approximately '80, '81. And the work  
6 with the State of West Virginia with the Health  
7 Department there would be from '78 to '80, right.  
8 Because I left there and went to Jamaica. So reverse  
9 those.  
10 Q. And the Appalachian Regional Hospital would  
11 have been --  
12 A. '68 to '72.  
13 Q. Okay. You got your Ph.D. at USC in 1975?  
14 A. Yes.  
15 Q. And your Master's also from USC?  
16 A. Yes.  
17 Q. What year was that?  
18 A. The same year.  
19 Q. 1975?  
20 A. Yes.  
21 Q. And the MSW from Portland?  
22 A. '66.  
23 Q. And the Bachelor's also in Oregon?  
24 A. '64.  
25 Q. '64. Quite an illustrious career.

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1 A. Thank you.  
2 Q. Let me focus you, if I can, on your work  
3 with the Department of Corrections in Alaska, 1998 to  
4 2003. That's really the focus of my inquiry today.  
5 You were the health care administrator?  
6 A. I was.  
7 Q. Tell me in your words, what does that job  
8 entail?  
9 A. The job entails reporting to the  
10 Commissioner. I was responsible to the Commissioner  
11 for the health, physical health and mental health, of  
12 the prisoners within the system. I did planning,  
13 organizing, coordinating, the budgeting, hiring,  
14 reporting and decision-making in that area.  
15 Q. Are you -- strike that.  
16 Were you involved as health care  
17 administrator in the supervision of health care at  
18 individual prison facilities within the State of  
19 Alaska?  
20 A. No.  
21 Q. Did you have any oversight responsibilities  
22 for the Palmer Correctional Center?  
23 A. Yes.  
24 Q. Explain, please.  
25 A. The health personnel at Palmer ultimately

Page 13

1 reported to me.  
2 Q. Could you explain the chain of command to  
3 me?  
4 A. Each facility --  
5 Q. Focussing just on the medical side.  
6 A. On the medical side of it.  
7 Q. Right.  
8 A. We had a medical director. The medical  
9 director reported to me. The medical director was  
10 responsible for the medical staff in each facility.  
11 At Palmer, we would have physician assistants, nurses,  
12 aides and so on. And the PA was in charge. And the  
13 PA reported to the physician, medical director. And  
14 that person reported to me.  
15 Q. Okay. During the years that you were  
16 health care administrator, who was the medical  
17 director?  
18 A. Oh, what's his name? I can't think of it  
19 now.  
20 Q. Was there more than one medical director  
21 during that time period?  
22 A. Yes. One was Robertson. And before  
23 Robertson, there was another. I -- I can't recall his  
24 name. I'm getting old. I'm sorry.  
25 MS. KAMM: I can't either.

4 (Pages 10 to 13)

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1 BY MR. MATTHEWS:  
 2 Q. I should have asked you this at the outset,  
 3 and I apologize. What is your date of birth?  
 4 A. April 2nd, 1938. That makes me 68 years  
 5 old.  
 6 Q. Do you know whether or not -- is it  
 7 Dr. Robertson?  
 8 A. Yes. Dr. Robertson.  
 9 Q. Was he the medical director in 2002?  
 10 A. I think so.  
 11 Q. And is Dr. Robertson an M.D.?  
 12 A. He is. His first name is John.  
 13 Q. If I understand the chain of command then  
 14 from Palmer, there would have been a PA in charge for  
 15 medical services reporting to Dr. John Robertson, an  
 16 M.D., who would then report directly to you as the  
 17 health care administrator.  
 18 A. Yes.  
 19 Q. That's basically the levels of command, if  
 20 you will?  
 21 A. And I reported to the Commissioner.  
 22 Q. And was that chain of command true in 2002?  
 23 A. Yes. But I cannot be certain if John  
 24 Robertson was the person at the time.  
 25 Q. If it wasn't Dr. Robertson, it would have

Page 15

1 been another M.D.?  
 2 A. It would have been another M.D., yes. And  
 3 if we were between M.D.s, that is, we're recruiting or  
 4 hiring a new M.D., we had two M.D.s who were  
 5 consultants. And they were always there.  
 6 Q. When you say always there, meaning always at  
 7 Palmer?  
 8 A. No. Always on contract with us and were  
 9 available for services. And, in fact, they were on  
 10 the payroll on a monthly basis.  
 11 Q. In interrogatory responses that I understand  
 12 you signed this morning, we asked for a number of  
 13 names about medical personnel involved at Palmer. And  
 14 several names were provided. Dr. Scott Kiester?  
 15 A. Yes.  
 16 Q. Is that a name that's familiar to you?  
 17 A. He was one of the consultants.  
 18 Q. And Dr. Jim Billman?  
 19 A. Yes.  
 20 Q. Also a consultant?  
 21 A. He was a consultant.  
 22 Q. Dr. David Holladay?  
 23 A. Yes.  
 24 Q. Also a consultant?  
 25 A. Yes.

Page 16

1 Q. And Dr. Ron Christensen?  
 2 A. Yes.  
 3 Q. Also a consultant.  
 4 A. (Witness nods head.)  
 5 Q. Happy to show you this question and the  
 6 answer, if it helps you. Really, what I want to get  
 7 at is whether any of those individuals was in the  
 8 position of medical director during that time period  
 9 or whether they were just consultants.  
 10 A. All those persons were seen as consultants,  
 11 yeah.  
 12 Q. Okay. Is it fair to say that for medical  
 13 staff at Palmer, you had final oversight  
 14 responsibility?  
 15 A. Yes.  
 16 Q. I assume -- tell me if I'm wrong -- that in  
 17 your position as health care administrator, you had  
 18 final oversight authority over medical staff at all  
 19 Department of Corrections' institutions; is that true?  
 20 A. Not exactly, in the sense that I had  
 21 oversight, but since I was not an M.D., I couldn't  
 22 really have oversight for clinical work.  
 23 Q. Okay. The medical director then reporting  
 24 to you --  
 25 A. Yes.

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1 Q. -- would that person have oversight for  
 2 clinical work?  
 3 A. Yes. That would be the person responsible  
 4 for clinical work.  
 5 Q. Was there a single medical director, say,  
 6 during 2002?  
 7 A. As I said, I can't recall. But we -- I know  
 8 John -- we'll have to get back to the records to see  
 9 when John Robertson was hired. But he was medical  
 10 director.  
 11 Q. Let me see if I can try it this way: Just  
 12 in terms of the chain of command, you as the health  
 13 care administrator would have had oversight  
 14 responsibility for all institutions within the State.  
 15 A. Yes.  
 16 Q. Was there a single medical director who then  
 17 reported to you having oversight responsibility from a  
 18 clinical standpoint over all institutions within the  
 19 State?  
 20 A. That's correct.  
 21 Q. So whoever that medical director was --  
 22 A. Yes.  
 23 Q. -- if the position was filled at the time --  
 24 A. Yes.  
 25 Q. -- it would have been a single individual

5 (Pages 14 to 17)

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1 with oversight responsibility?

2 **A. It would have been a single individual.**

3 Q. Okay.

4 **A. And if the position were not filled, we**

5 **would have used any of those consultants to be the**

6 **medical -- to make the medical decisions that had to**

7 **be made.**

8 Q. What involvement would you have had directly

9 in making medical decisions?

10 **A. None.**

11 Q. I mean no disrespect by this question. But

12 do you have the training or the ability from a medical

13 standpoint to make medical decisions?

14 **A. Absolutely not.**

15 Q. So that wasn't part of your responsibility.

16 **A. It was not.**

17 Q. It was not something you undertook.

18 **A. No.**

19 Q. If there were a question about the medical

20 care of an inmate at one of the institutions, how

21 would you as the health care administrator address

22 that?

23 **A. We would -- if I were not satisfied that the**

24 **prisoner was getting services, although a medical**

25 **person said he was, we would use one of our**

Page 19

1 consultants as a referee. And usually, that worked

2 through the Medical Advisory Committee.

3 Q. And explain for me, if you would, what the

4 Medical Advisory Committee was.

5 **A. Medical Advisory Committee comprised a group**

6 **of medical persons, including two contract physicians**

7 **and physician assistants, nurses, who met once weekly**

8 **to go over cases that were not resolved at the local**

9 **level.**

10 Q. Was that a clinical meeting, so to speak?

11 **A. It was a clinical meeting.**

12 Q. Are there records kept of the Medical

13 Advisory Committee?

14 **A. Oh, yes.**

15 Q. Are they kept in the form of minutes?

16 **A. Yes. And usually whatever decisions were**

17 **made there, I would -- I acted as sort of secretary to**

18 **this thing. I signed off on them. So a prisoner**

19 **would get a response from -- from the Medical Advisory**

20 **council through my signature.**

21 Q. Okay. That helps. Let me focus you, if I

22 can, on an inmate at Palmer, Charlie Davis. Is that a

23 name that's known to you?

24 **A. No.**

25 Q. Do you know who he is?

Page 20

1 **A. No.**

2 Q. Know anything about him?

3 **A. No.**

4 Q. Know anything about his medical condition?

5 **A. Well, just what I've read.**

6 Q. And that would include materials that you've

7 been provided in this case?

8 **A. Yes. That was provided to me in this case.**

9 **That's the first time I heard about him.**

10 MR. MATTHEWS: Mark that as number 1,

11 please.

12 (Exhibit 1 was marked.)

13 BY MR. MATTHEWS:

14 Q. Take a look at the documents that we have

15 marked as Exhibit 1, if you would, please.

16 **A. Yes.**

17 Q. Do you recognize that packet of materials?

18 **A. Yes. I recognize this as coming from the**

19 **Department.**

20 Q. You recognize the cover sheet?

21 **A. I recognize my signature.**

22 Q. Okay. Tell us what this is, to the extent

23 you remember it.

24 **A. This would have come before the Medical**

25 **Advisory Committee meeting on -- its regular weekly**

Page 21

1 **meeting, in which the medical staff would go over the**

2 **grievance and would make a decision. And this**

3 **decision was conveyed back to the grievant.**

4 Q. This cover sheet is dated September 5th,

5 2002, correct?

6 **A. Yes, it is.**

7 Q. And that bears your signature on the left

8 next to your name?

9 **A. It does.**

10 Q. You mentioned a little while ago in your

11 testimony about the Medical Advisory Committee --

12 **A. Yes.**

13 Q. -- that you would act as secretary for the

14 group --

15 **A. Yes.**

16 Q. -- convey the decision, if you will, of the

17 Advisory Committee back to the grievant.

18 **A. Yes.**

19 Q. Is what we're looking at in Exhibit 1, this

20 top page, is that what you were talking about earlier?

21 **A. Yes.**

22 Q. So this page, if you will, represents the

23 decision of the Medical Advisory Committee concerning

24 a particular grievance.

25 **A. Yes.**

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6 (Pages 18 to 21)

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1 Q. Not just your individual decision; is that  
2 true?  
3 **A. Oh, absolutely true, yes. And when you say**  
4 **my decision, this is the medical staff decision. And**  
5 **this response was prepared by a medical person. But**  
6 **matters going out of the Department would go under my**  
7 **signature, the administrator.**  
8 Q. Can you tell me then what involvement you  
9 had specifically in the decision to deny this  
10 grievance?  
11 **A. The only decision I would have in these is**  
12 **to determine whether or not agency policy was being**  
13 **followed. But in terms of the medical aspect of the**  
14 **decision-making, I would have no say so.**  
15 Q. Let me make sure I understand this cover  
16 sheet, at least.  
17 **A. Yes.**  
18 Q. Is it fair to say that this is a document  
19 which is prepared by medical staff simply for your  
20 signature?  
21 **A. Yes.**  
22 Q. In effect, you are simply the scrivener?  
23 **A. Except if there were some matters that would**  
24 **be contrary to policy, then I would say something**  
25 **about that.**

Page 23

1 Q. Was a portion of this particular grievance  
2 directed to medical policy, in your view?  
3 **A. I imagine all grievances would pertain to**  
4 **medical policy, one way or the other.**  
5 Q. I guess what I'm trying to figure out is  
6 whether you had a specific role in the denial of this  
7 grievance or were simply signing off on the medical  
8 decision.  
9 **A. I was simply signing off on this.**  
10 Q. Do you have any memory as you sit here today  
11 of this particular grievance?  
12 **A. No, sir.**  
13 Q. Any idea what the underlying beef was?  
14 **A. No. I -- as I said, I didn't even know this**  
15 **guy. I never -- you know, in any given meeting, we**  
16 **probably look at 20 of these things. And probably**  
17 **some outstanding one would jump out at you. But**  
18 **ordinarily, no.**  
19 Q. Do you know, for instance, how old Mr. Davis  
20 was?  
21 **A. No, sir.**  
22 Q. Do you know what his medical condition was?  
23 **A. No, sir.**  
24 Q. Do you know why he was complaining about his  
25 medical care?

Page 24

1 **A. No, sir.**  
2 Q. Do you know whether or not he had a serious  
3 medical condition?  
4 **A. No, sir.**  
5 Q. Do you know whether or not Mr. Davis was  
6 receiving adequate medical care at Palmer Correctional  
7 Center?  
8 **A. I do not know that.**  
9 Q. Are you in a position to say one way or the  
10 other whether or not the medical care Mr. Davis  
11 received at Palmer was adequate?  
12 **A. No, sir.**  
13 Q. Are you in a position to say one way or the  
14 other whether the medical care that Mr. Davis received  
15 at Palmer was in compliance with Department  
16 guidelines?  
17 **A. I'd say yes.**  
18 Q. How is it that you know that?  
19 **A. Because we hired qualified people to deliver**  
20 **the services. And we assumed that if they are doing**  
21 **their job -- but the medical director would be**  
22 **supervising those people. And if they were not doing**  
23 **their job, sooner or later, I would have heard of it.**  
24 **And we have the grievance process. So if a person**  
25 **believes he or she is not receiving services, then**

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1 **they would go up the chain of the grievance.**  
2 Q. Isn't that what happened here?  
3 **A. Yes. That's what -- I imagine that's what**  
4 **he said. But the substance of that, I would not know**  
5 **if he were or were not receiving, since I'm not a**  
6 **physician. If some -- if a physician or medical**  
7 **person told me that, I would then know.**  
8 Q. So you would have to rely upon a medical  
9 person to tell you that Mr. Davis' care was adequate  
10 or inadequate, true?  
11 **A. Yes.**  
12 Q. Do you know whether or not you did that in  
13 this case?  
14 **A. No, sir. I don't. I don't know.**  
15 Q. In looking at this packet, the grievance  
16 that was appealed was dated June the 27th, 2002, if  
17 you look at the last page.  
18 **A. Yes.**  
19 Q. And the decision which you sent back is  
20 dated September 5th, 2002, correct?  
21 **A. Yes.**  
22 Q. Are you able to tell me what happens to that  
23 grievance in the intervening time?  
24 **A. The 6/27/02 decision?**  
25 **Q. Yes.**

7 (Pages 22 to 25)

Exhibit 9  
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Melbourne Henry

Deposition

April 28, 2006

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1 **A. So June, July, August, September. So there**  
 2 **is probably like a three-month delay here you're**  
 3 **asking.**

4 Q. That's -- that's what it appears from the  
 5 paperwork that I've seen. What I'm trying to  
 6 understand is what happens in that time period.

7 **A. I -- I cannot say.**

8 Q. Okay. Is there some record of decision  
 9 concerning a grievance appeal, like the first page,  
 10 other than this letter back to the inmate?

11 **A. Yes. When -- when a decision comes in to my**  
 12 **office, it is recorded and the secretary sets a**  
 13 **meeting with this committee. And usually, it's done**  
 14 **within a certain number of days. So --**

15 Q. In fact, the policy sets a certain number of  
 16 days for --

17 **A. Indeed. So I cannot say what happened from**  
 18 **the 27th until, you know, my letter of this date. One**  
 19 **would have to go back and see when it was logged in**  
 20 **and when the decision was made.**

21 Q. Would there be paperwork documenting the  
 22 steps along the way?

23 **A. Yes. There would be.**

24 Q. And what paperwork would we expect to see?

25 **A. The grievance and the grievance response.**

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1 **And we have -- I believe there was a person who was in**  
 2 **charge of grievances. And that person would**  
 3 **prioritize these things or send them through the**  
 4 **system at -- to the appropriate persons within the**  
 5 **system. And I guess at each of those stages, it would**  
 6 **be documented.**

7 Q. Would all of that documentation eventually  
 8 make its way to the Medical Advisory Committee for its  
 9 review in making a final determination?

10 **A. Yes. There was a chart that we prepared**  
 11 **with all of this stuff.**

12 Q. In this response to the grievance appeal  
 13 that you have in front of you, second sentence says  
 14 "Your grievance is for the facility where you are  
 15 housed not having adequate medical staff to meet your  
 16 medical needs," correct?

17 **A. I didn't understand the question, please.**

18 Q. I'm just trying to make sure -- the second  
 19 sentence of that letter --

20 **A. Yes.**

21 Q. -- it reads "Your grievance is for the  
 22 facility where you are housed not having adequate  
 23 medical staff to meet your medical needs," correct?

24 **A. Yes. That's what it says.**

25 Q. And the findings in the first sentence say

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1 "Your grievance states that you have a heart condition  
 2 and serious medical condition that the officers are  
 3 not trained to recognize and properly manage during  
 4 the hours that the medical department is not open."

5 **A. Yes.**

6 Q. Correct?

7 **A. Yes.**

8 Q. Do you know what medical staff there was  
 9 available to treat someone with a heart condition and  
 10 serious medical condition during the hours that the  
 11 medical department was not open?

12 **A. I guess this individual -- this statement**  
 13 **refers to what was contained in the grievance. I**  
 14 **don't -- I don't know that this statement is saying**  
 15 **that we, the medical committee, have found that you**  
 16 **have a serious medical condition, et cetera. I don't**  
 17 **know that is what we're saying. We're responding to**  
 18 **his words in his grievance.**

19 Q. You don't know whether he had a serious  
 20 medical condition or not?

21 **A. I don't know, no.**

22 Q. That's outside your area of expertise?

23 **A. Yes, it is. I could have learned about it.**

24 **But in -- in this instance, if the medical folks had**  
 25 **determined that his condition were serious enough to**

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1 **warrant a higher level of care facility, he would have**  
 2 **been transferred to a place where there was 24-hour**  
 3 **care.**

4 Q. Was such a facility available within the  
 5 Department of Corrections?

6 **A. Yes. In Anchorage, you'd have 24-hour care.**

7 Q. If we look at the third page of this  
 8 grievance, there's a section entitled Superintendent's  
 9 Findings and Determination.

10 **A. Uh-huh.**

11 Q. Is that a portion of the grievance that you  
 12 recognize?

13 **A. It's here, but I don't recognize it as such.**

14 Q. Does each grievance require the  
 15 superintendent of the facility to essentially sign off  
 16 on --

17 **A. Yes.**

18 Q. -- the grievance before it can get to your  
 19 level, correct?

20 **A. Yes, yes.**

21 Q. In this case, didn't the superintendent of  
 22 that facility suggest that Mr. Davis be transferred to  
 23 a facility with a full-time medical staff?

24 **A. Yeah. He's saying that. But, you know, I**  
 25 **think this is an inappropriate response of the**

8 (Pages 26 to 29)

Exhibit

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Melbourne Henry

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1 superintendent.  
 2 Q. Why?  
 3 A. Because he's not a medical person.  
 4 Q. So is it fair for me to assume that if the  
 5 superintendent makes a recommendation based upon a  
 6 perceived medical suggestion, that the Medical  
 7 Advisory Committee will ignore that?  
 8 A. Not necessarily. If a superintendent called  
 9 and said I have somebody here who is, quote, "in a  
 10 life-threatening condition," which he says here, then  
 11 probably the response would be has he seen the nurse  
 12 or the PA. What do they have to say about that? But  
 13 we would hear that. And if he said no, then we would  
 14 send somebody out to make the determination if indeed  
 15 this is a life-threatening situation and the person  
 16 needs to be in a different facility.  
 17 Q. Do you know whether or not the inmate, in  
 18 this case, Mr. Davis, was ever seen by a physician  
 19 while he was at Palmer Correctional Center?  
 20 A. I don't know. But I'd say that it would be  
 21 unusual if he did not.  
 22 Q. You would have expected --  
 23 A. I would have expected, yes.  
 24 On the -- on the other hand, we depend on  
 25 the PAs to make the referral. We expect everybody

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1 who's in the facility to be seen within a certain  
 2 period. And after seen, the PA determines through  
 3 whatever triage system they use if this person needs  
 4 to go on further. But --  
 5 Q. So you're going to rely upon the on-site  
 6 medical staff to make a recommendation.  
 7 A. Of course. Of course.  
 8 Q. When a prisoner makes a grievance such as  
 9 the one we have here stating that medical care has not  
 10 been adequate, is there a procedure within your office  
 11 to have that person examined by a medical doctor?  
 12 A. I can't quote chapter and verse, but I'd say  
 13 yes.  
 14 Q. That's what you would expect to happen.  
 15 A. Again, we would begin -- we have different  
 16 levels of care. And so if a person requests to be  
 17 seen, we would hope that the physician assistant --  
 18 the nurse or the physician assistant would make the  
 19 determination. And once the determination is made,  
 20 the person would be seen. If the person could not be  
 21 seen within our own system, we would refer the person  
 22 out to a contract facility.  
 23 Q. Do you know whether or not Mr. Davis was  
 24 ever seen by a medical doctor after filing this  
 25 grievance?

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1 A. I have no idea, sir. I don't know. But  
 2 based on this response, the last sentence said "At the  
 3 present time there is no indication that the medical  
 4 and security staff at Palmer Correctional Center can  
 5 not meet your essential health care needs per DOC  
 6 policy..."  
 7 So at this point, I think what they were  
 8 saying is that the level of care in the facility is  
 9 sufficient for your needs. And if the medical people  
 10 are saying that, then I would imagine that's so.  
 11 Q. This is the medical people on the Advisory  
 12 Committee.  
 13 A. On the Medical Advisory Committee.  
 14 Q. Do you know whether any of those medical  
 15 people on the Advisory Committee ever examined  
 16 Mr. Davis?  
 17 A. I do not know, but it's very possible.  
 18 Because usually, the physician assistants -- we have  
 19 at least one physician assistant in these meetings.  
 20 Q. Okay. Is that a rotating position,  
 21 physician's assistant?  
 22 A. Usually when someone has a patient that is  
 23 going to be seen, that person -- if he's out in the  
 24 Valley, the person is sure to come on in. Usually,  
 25 the physician assistants who are there are the ones

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1 from the Anchorage area. Because the meeting is held  
 2 in Anchorage and they just come on routine.  
 3 Q. Maybe I'm unclear about the process. So let  
 4 me make sure that --  
 5 A. Okay.  
 6 Q. -- we work it through. In a situation where  
 7 a medical grievance is filed from Palmer, you have a  
 8 PA who is in charge on a day-to-day basis out there.  
 9 A. Yes.  
 10 Q. Right? So the PA in charge in Palmer would  
 11 then be brought in as part of the medical review that  
 12 is done as part of the grievance appeal?  
 13 A. Yes.  
 14 Q. Okay.  
 15 A. And depending what is happening, the person  
 16 may or may not be there. But --  
 17 Q. In the ideal world --  
 18 A. In the ideal world, he's there.  
 19 Q. Okay. Is it fair to assume that the  
 20 identities of all people participating in the medical  
 21 appeal would be noted somewhere in the records?  
 22 A. Yes, it is.  
 23 (Discussion off the record.)  
 24 MR. MATTHEWS: If you don't mind, can we  
 25 take a two-minute break?

9 (Pages 30 to 33)

Exhibit

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